

~~DEMAND PROMISSORY NOTE  
AND LOAN AND SECURITY AGREEMENT~~

FOR VALERIE BERNHARD, the undersigned hereover ("Bernhard") promises to pay to the order of Master's Credit, Inc. ("Lender"), with its principal office at 11500 City Center Drive, Suite 300, Carroll, Indiana 46037, or such other place as Lender may designate in writing, or on the Dissolver Paper from time to time, to be paid money of the United States of America, this principal sum of Twelve Million Dollars and Zero Cents (\$12,000,000.00), or such greater or lesser sum which may be advanced to or on behalf of Bernhardt from time to time, together with all costs, interest, fees, and expenses as provided for under this Note. Unless otherwise stated in an addendum to this Note, this Note shall become effective on the date of Bernhardt's execution hereof or of both hereof and Bernhardt's signature (with date, or the effective date otherwise stated) in the applicable addendum, the "Borrowing Date".

Now, THEREFORE, in consideration of the mutual covenants, agreements and conditions hereinbefore and hereunder made, and collectively, the "Parties" agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Note or in the other Loan Documents without definition shall have the respective meanings as set forth in Annexure A, attached hereto and incorporated herein by reference. Such meanings to be equally applicable to both the singular and plural forms of the terms defined. Any undefined term used herein or in another Loan Document, but not otherwise defined herein or in such other Loan Document, or the same may be, shall bear the meanings ascribed to them in the UCC.
2. **GRANT OF SECURITY INTEREST.** In order to secure full and prompt payment of all Liabilities and performance of all obligations of Borrower to Lender, As Surety, under their respective documents or contracts:
- (a) Borrower grants to Lender a continuing security interest in all of Borrower's assets and properties, wherever located, including, without limitation, all equipment of any kind or nature or moving or immovable and vehicle parts all inventory now owned or hereafter acquired, including, without limitation, all Lease Plant Inventory now owned or hereafter acquired all amounts in Borrower's Receivables held by or on behalf of Lender, or any all Lease Plant Inventory now owned or hereafter acquired, deposits, accounts receivable, contract rights and interests, patents, shovel paper, building valuation, all Leaseholdings and goods in transportation now owned or hereafter acquired by Borrower or all residual all of Borrower's notes and securities (including any bonds and securities established on securities exchanges or otherwise stored by or on behalf of Borrower in electronic or digital form) and all additions, accretions, replacements, substitutions, and proceeds of any such Acquiring (collectively, the "Collateral").
- (b) The security interest given to Lender in Section 2(a) is given to Lender to secure payment of all Liabilities and the performance of all obligations of Borrower to Lender, under this Note, under any other Loan Document or otherwise, all without regard to such valuation or appointment. Lender, upon the request of Lender, Borrower shall promptly execute and deliver to Lender or its designee such further documents and instruments, and shall take such further action, in each case as Lender may from time to time require or instruct to protect Lender's interest in the Collateral or otherwise obtain the perfection of this Note and the other Loan Documents. Without limiting the generality of the foregoing, Borrower shall, upon the request of Lender, (i) use its best efforts to ensure all amounts and securities that may be necessary or appropriate for the assignment to Lender of any Collateral (including any amount of Borrower that constitutes any portion of the Collateral), or that may be necessary in order for Lender to resolve the full benefit of all Collateral and to achieve its security interest in the Collateral; (ii) provide Lender and its representatives with full access to all Collateral, including any and all books and records relating thereto; and (iii) deliver to Lender all Collateral consisting of acquired deposits, shovel paper, and inventory and equipment for collection in the aggregate (i) and each, unimpounded by any third party or any other instrument of transfer executed by Borrower, in each case promptly after Borrower receives the same.
- (c) Borrower authorizes Lender to file any UCC financing statement and any amendments thereto and any substitution statements under the UCC, in each case to the extent necessary or advisable in order to preserve the security interest granted by Borrower hereunder or under any other Loan Document. Further, Borrower hereby authorizes, ratifies and approves any UCC financing statements or other filings under the UCC that may have been made by or on behalf of Lender and its Assignees prior to the Effective Date. The security interest granted by Borrower in Section 2(a) shall be in addition to, and not a substitution for, any right of first, selling, or redemption that Lender may have against Borrower, whether granted to this Note, any other Loan Document, or any Law.
3. **INTEREST RATE.** Interest shall accrue on Borrower's Liabilities to Lender in accordance with the following schedule:
- (a) All outstanding Liabilities relating to a Platinum Advance or a Residential Advance shall accrue interest at a per annum rate from the Maturity Date or the Repayment Origination Date, as the case may be, based upon a 360-day year, and such interest shall be compounded daily at the Maturity Date, plus the Contract Rate, in each case or stated in the applicable Advance Agreement, with such outstanding Liabilities on a daily basis.
- (b) The Base Rate may be modified or modified by Lender from time to time in Lender's sole discretion by posting such amendment or modification on the Platinum Program Rate Term and Residential Program Rate Term. However, Lender may increase the Base Rate by no more than fifty (50) basis points (i.e., one-half of one percent) in any thirty (30) day period.

4. **Borrower's REPRESENTATIONS, WARRANTIES, AND COVENANTS.** At the time of Borrower's execution of this Note and continuing at all times thereafter until all Liabilities have been fully paid and satisfied in full and this Note and all other Loan Documents terminated in accordance with their respective terms, Borrower hereby represents, warrants, covenants, and agrees:
- (A) To sell, lease, or rent Lender Financed Inventory only in the Ordinary Course of Business and in compliance with LSA, and not in full or substantial disposal of any Lender Financed Inventory except as herein provided.
  - (B) To keep Lender Financed Inventory only at Borrower's Place of Business and not to remove any Lender Financed Inventory from such place for a period exceeding twenty-four (24) hours, unless previously authorized in writing by Lender. Notwithstanding the foregoing, Borrower may request Lender to authorize Borrower to remove certain Lender Financed Inventory to another named location at such designated Lender's place of business. Borrower's request to authorize Lender Financed Inventory as referenced above is subject to Borrower and the designated dealer executing and submitting to Lender any documentation that Lender may require, including a DCO financing statement or other similar filing on appropriate dealer, as an authorization for Lender to make any such filing. Lender may deny Borrower's request to authorize Lender Financed Inventory in Lender's sole and absolute discretion.
  - (C) To keep Inventory in good repair and insured against all physical risks in such amounts and under such policies issued by such insurance companies as are deemed necessary and satisfactory by Lender; provided, however, that any insurance company having required coverage to Borrower pursuant to the requirements of this Section 4(c) shall have been assigned to an A.M. Best Financial Risk Category (FRC) of "A" or higher, and shall have a minimum A.M. Best Financial Strength (RBS) rating of "A-". Lender shall be named "loss payee" on such insurance policies. Borrower shall provide Lender with a certificate or certificates of insurance evidencing that the above-stated insurance requirements have been satisfied and specifying that the applicable insurance coverage will not direct future notice to Lender at least thirty (30) days prior to any cancellation or non-renewal of any of the above-stated policies. Alternatively, and within the limit of Lender Financed Inventory has been insured as "warehouse" or is otherwise eligible for the Collateral Protection Program, Borrower may satisfy the insurance coverage required under this Section 4(c) by voluntarily enrolling in Lender's Collateral Protection Program. In the event Borrower fails to procure, maintain or provide proof of the insurance coverage required under this Section 4(c), Lender may enroll Borrower in Lender's Collateral Protection Program, or, alternatively, Lender may insure on Borrower's behalf such policies of insurance as Lender, in its sole discretion, deems necessary, in such case from each borrower, in such amounts and with such coverages and deductibles as Lender, in its sole discretion, deems necessary. Charges incurred under the Collateral Protection Program are indicated on the Borrowing Date Sheet the amount of such original Finance Advance noted in a Debt of Lender Financed Inventory, through the life of the Borrowing Advance. Borrower understands and agrees that Lender has no liability interest in the Collateral, including all Lender Financed Inventory, by virtue of Borrower's pledge of the Collateral as security to Lender for the repayment of all Liabilities by Borrower to Lender under this Note and all other Loan Documents. For the Collateral Protection Program see published in the Program Program Rule, Terms and Fee Schedule.
  - (D) To keep all files complete and accurate records of Borrower's Business and to promptly (but in any event within ten (10) Business Days) provide to Lender copies of such records and any financial statements regarding Borrower's Business or Borrower's financial condition generally, in such case to Lender may request Borrower authorize Lender to share such information and any and all other information that Lender may possess regarding Borrower's Credit Line or Borrower's relationship with Lender, including information regarding this Note and the other Loan Documents; Borrower's loan history; account history; payment history; credit history; account balance; loan application; credit availability; credit availability; and such other general business information regarding Borrower's Credit Line and Borrower's relationship with Lender, to any and all Persons that Lender, in its sole discretion, deems reasonable, including without limitation the Bankruptcy of the foregoing, Borrower shall maintain complete and accurate records and financial statements for all Advances requested or made hereunder, and all other transactions hereunder, including bank statements, cancelled checks, sales invoices, proofs of payment, and other sales files, in such case for at least a period of five (5) years after the date on which such Advances were made or such transaction occurred, as the case may be.
  - (E) To allow Lender and its Representatives to inspect Lender Financed Inventory during normal business hours and at other reasonable times at Borrower's Place of Business and such other places as any Lender Financed Inventory may be located and to inspect and make copies of Borrower's books and records. Borrower shall pay Lender for the costs and expenses incurred by Lender or its Representatives in connection with audits of any Lender Financed Inventory and such inspection and copying of Borrower's books and records, in such case on the applicable Inventory Date.
  - (F) To hold all amounts received from the sale of any Debt of Lender Financed Inventory in the form or received in trust for the sole benefit of and for Lender, and to remit such funds satisfying all amounts due Lender and owing by Borrower for such Debt of Lender Financed Inventory, in such case within twenty-four (24) hours of Borrower's receipt of such funds (or receipt of such funds by any Affiliate of Borrower).
  - (G) To hold all amounts received that relate to any Receivable that is subject to a Receivable Advance in the form or received in trust for the sole benefit of and for Lender, and to remit such funds satisfying all amounts due Lender and owing by Borrower for such Debt of Lender Financed Inventory, in such case within twenty-four (24) hours of Borrower's receipt of such funds (or receipt of such funds by any Affiliate of Borrower).
  - (H) That for each Receivable which is the subject of a Receivable Advance (i) Borrower is the sole and beneficial owner of such Receivable; (ii) such Receivable is not already encumbered by any voluntary or involuntary liens which are subject to Lender's security

interest in such Receivables (iii) Borrower has a legal right to pledge such Receivables to Lender to secure the Liabilities under this Note and the other Loan Documents; (iv) such Receivables represent an original loan sale to the buyer(s) named thereby (v) such Receivables are now and will remain free from any claims, defenses, offset or counterclaims of any nature and is unencumbered against the buyer(s) named thereby and third parties according to its terms (vi) all documents, data, statements, and other information in such Receivables and all related documents are true and accurate to the best of Borrower's knowledge, are free from fraud, and have not been altered or modified subsequent to their creation, except for such alterations or modifications as have been acknowledged and published by Borrower and the other parties thereby (vii) Borrower has met all of Borrower's obligations to the subject buyer(s) for such Receivables, and Borrower knows knowledge of any event which indicates or suggests the prospective non-satisfiability of all or any portion of the Receivables (viii) the fact that the subject of the Receivables was sold at fair market value, not at a bargain, and has actually been delivered into the possession of and has been accepted by the subject buyer(s); and (ix) the only and related financing of the fact that the subject of the Receivables complies with all Lender (including all money Lender, the Children's Consumer Credit Code, all consumer credit Lender, and all equal credit opportunity and disclosure laws).

- (1) That any request for an Advance shall constitute an affirmative representation by Borrower to Lender that Borrower is in full compliance with all terms, conditions, representations, warranties and covenants made under this Note and the other Loan Documents, in each case as of the date of such request.
- (2) That Borrower now has, and will have at the time of any Advance and through the date of any repayment of the Liabilities thereunder, (i) sufficient cash and equity capital to conduct its business and pay its debts as they mature; (ii) sufficient capital and other financial resources necessary to engage in the business and perform its obligations under any agreement to which it is a party and any transaction in which it may engage hereafter; and (iii) ownership of property (including property of all wholly-owned and partially-owned subsidiaries of Borrower) having an aggregate fair market value that is greater than the sum of Borrower's debts (which shall include debts of all wholly-owned and partially-owned subsidiaries of Borrower).
- (3) That, without Lender's prior written consent (which consent may be withheld by Lender in its sole discretion), Borrower shall not (i) make any distribution of its property or assets (including any cash), except for the cash and other distributions that (A) are made in the Ordinary Course of Business and, (B) are made in compliance with all laws, and (C) will not render Borrower or any of its Affiliates insolvent or otherwise impair the ability of Borrower or any of its Affiliates to satisfy their prospective financial obligations when and as such obligations become due; (ii) sell, lease, redeem, issue, purchase, or otherwise acquire, directly or indirectly, any of its capital stock or other equity, in any manner which would reduce, in the aggregate and to substantial extent, either the cash position or "tangible and visible" assets of Borrower (as defined in accordance with United States generally accepted accounting principles) by more than ten percent (10%) (iii) make any material change in its capital structure, or make any material change in its business or operations; (iv) make any loan or other advances of money or any lease or advance of inventory or other property to any person, including any officer, director, shareholder, employee, or Affiliate of Borrower, other than (A) advances against accounts receivable, and other similar advances to employees in the Ordinary Course of Business, and (v) issue any securities or aggregate of two percent (2%) of the Capital Lines (vi) undertake or permit any of its equity holders to undertake any transaction or series of transactions that would result in the equity holders of Borrower, as of the Effective Date, owning and controlling less than twenty-five percent (25%) of all classes of the outstanding equity of Borrower on a fully-diluted basis; or (vii) engage in any transaction or series of transactions to sell, liquidate, or otherwise dispose, all or substantially all of its assets. If Borrower desires to engage in any transaction or series of transactions that would, absent the written consent of Lender, be prohibited under this Section 4(c), Borrower shall provide Lender with no less than thirty (30) days prior written notice describing the proposed transaction or series of transactions in reasonable detail, and Lender may, in its sole discretion, consent in writing to such transaction or series of transactions, to the same extent, for purposes of clarity, in no event shall any failure to respond by Lender be construed as consent or non-consent to any transaction or series of transactions hereunder, or any waiver by Lender with respect to any transaction or series of transactions prohibited under this Section 4(c).
- (4) To pay immediately and to remain stayed with all interest, assessments, charges, judgments, and expenses which may now or hereafter be entered, levied, or assessed against Borrower, Borrower's business or any other business in which Borrower may be involved, under any of the Loan Documents. Lender may, in its sole discretion, make an Advance to a third party on Borrower's behalf to pay such taxes, assessments, charges, judgments, and expenses to protect Lender's interests, and may thereafter collect the amount of any such Advances, together with any associated costs and expenses of Lender, from Borrower as an Administrative Charge pursuant to the terms of this Note.
- (5) That Borrower has obtained all necessary permits and licenses required by law to operate its business or a subsidiary or joint venture, known, or under its jurisdiction, and that Borrower has complied with all filing requirements to operate in the entity or business type or sector with the appropriate governmental authority.
- (6) That no legal, administrative, or arbitration proceedings are pending or threatened against Borrower which could reasonably affect Borrower, its business or any Subsidiary, or which could materially and adversely affect any other business of Borrower or any properties or prospects, or the general condition, financial or otherwise, of Borrower, or Borrower's ability to repay all Liabilities and otherwise meet its obligations under this Note and the other Loan Documents.
- (7) That Borrower shall immediately notify Lender in writing of any law, contract, law or any legal, administrative, or arbitration proceedings to which Borrower becomes a party other than the Effective Date.
- (8) That all payments made by Borrower to Lender in cash or ACH, at the time of payment, will be written or drawn upon an account that



expenses (including a vehicle) in order to obtain to cover the dollar amount of such check or A/C bill.

- (d) That Borrower's legal name and address as they appear in Section 15 are accurate and complete, and Borrower shall immediately notify Lender in writing of any change in Borrower's Place of Business, bank account information, legal name, physical address, contact information for Borrower or any principal of Borrower (including any change in telephone number), mailing address, business type, date of organization, ownership, management, or control and shall transmit any and all documents requested by Lender if any time to bring Borrower into compliance with this Note and any other Loan Documents.
  - (e) That Borrower and all Guarantors are legally competent and have all necessary power and authority to enter into and perform their respective obligations under this Note and the other Loan Documents.
  - (f) That Borrower shall not disclose to any third party, without the written consent of Lender, any terms and conditions applicable to Borrower's Credit Line, whether such terms and conditions are set forth in the applicable Advance Schedule, this Note or any other Loan Documents.
  - (g) That Borrower may have to contend with Lender where information can be accessed and businesses can be run through the Internet. Paid as by other electronic means, and Borrower shall have the means and the affirmative obligation to control access to the account information of Borrower by passwords and a Borrower account number. Borrower shall be solely responsible for any unauthorized access to Borrower's account. Access to Borrower's account may be restricted or otherwise restricted by Lender at any time, in Lender's sole discretion, without prior notice to Borrower.
  - (h) That Borrower shall use Advances solely for Business purposes and not for personal, family, or household purposes. This means, among other things, that Borrower may not use Advances to purchase a vehicle for Borrower's personal, family, or household use, and no Lender-financed inventory may be used for Borrower's personal, family, or household use. This Note and all Advances requested or made hereunder shall be requested and made solely for commercial purposes and Borrower hereby expressly and irrevocably waives, in the fullest extent permitted by Law, the protections of any Law intended to protect consumers or regulate consumer loans.
  - (i) That Borrower will provide Lender the name of each individual authorized to buy inventory and make Advances requests hereunder on Borrower's behalf. Notwithstanding the foregoing or anything to the contrary in any Loan Document, Borrower shall be responsible and liable for all Advances requests and other liabilities incurred by any such authorized individual or any other actual or apparent representative or agent of Borrower (regardless of whether such Person is specifically requested by Borrower as contemplated above).
  - (j) Borrower shall accept and pay to Lender on demand and without notice a sum equal to \$1,000,000 (one million dollars) understanding the manner in which, or on any separation the and not as a penalty, in the event Borrower requests NetNet Capital to close Borrower's line of credit with NetNet Capital or adds an additional Borrower under which 14 months following the expiration of this Note. Borrower acknowledges and understands that NetNet Capital shall be under no obligation to close Borrower's line of credit or terminate any related UCC-1 Financing Statements until such time that all liabilities of Borrower to NetNet Capital, including the amount of the referenced loan, has been paid in full.
  - (k) That Borrower shall not lease, mortgage, pledge, grant or have another security interest in the Collateral without the prior written consent of Lender.
2. **CREDIT TERMS AND CONDITIONS.** Borrower understands and agrees to the following terms, conditions, covenants, and other agreements relating to its Credit Line and any Advances made under this Note and the other Loan Documents, and acknowledges that any failure by Borrower to adhere to any such terms, conditions, covenants, or other agreements shall result in Lender having the right (in addition to any other right that Lender may have), in its sole discretion and without notice to Borrower, to declare a Majorly Event with respect to its related Advances:
- (a) The decision to make an Advance to or on behalf of Borrower is the exclusive right of Lender, whether or not in breach of Default has occurred, and Borrower understands that Lender may refuse to make an Advance at any time, with or without cause and without prior notice to Borrower or any Guarantors of such decision. Borrower is not entitled to finance any inventory or Receivable through Lender.
  - (b) Borrower's Credit Line may require a Reserve or a cash underlying mechanism to the point of credit and to additional security for the repayment of liabilities under this Note and the other Loan Documents. In the event a Reserve is either requested by Borrower or required by Lender, Borrower will be required to complete a Reserve Agreement, and the applicable Requested Reserve Amount and Reserve Charge will be reflected on the applicable Advance Schedule.
  - (c) Borrower must deliver or cause to be delivered to Lender the Title or MCO for any Unit of Inventory at the time of any related Pledgeless Advance request, or, in the event of a Universal Source Purchase, within seven (7) days after Lender funds the related Pledgeless Advance.
  - (d) Borrower must deliver or cause to be delivered to Lender the original Receivable which is the subject of a Receivable Advance request within seven (7) days after Lender funds such Receivable Advance. In the event that a Receivable Advance is made by Lender with respect to a Unit for which there is an unpaid Pledgeless Advance, then any such Receivable Advance made to Borrower shall be net of such unpaid Pledgeless Advance and all other unpaid liabilities of Borrower with respect to such Unit.
  - (e) Borrower must be in complete compliance with this Note and the other Loan Documents before an Advance request may be approved by

Lender. Additionally, Lender may require certain other information from Borrower to be submitted before Lender will consider an Advance request.

- (f) Borrower shall pay all Liabilities, without notice, that mature or relate to a Pledged Advance for any Unit of Lender Pledged Inventory on or before the Maturity Date. Lender shall apply such payments to any and all Liabilities relating to such Pledged Advance. Notwithstanding anything herein to the contrary, if a shortage exists between the payments received by Lender with respect to a Pledged Advance, and the Liabilities relating to such Pledged Advance, then such shortage shall be immediately due and payable and shall continue to be considered a Liability owed by Borrower to Lender, secured by the remaining Collateral.



- (6) Borrower shall pay all Liabilities, without notice, that concern or relate to a Receivable Advance for a subject Receivable on or before the Maturity Date. Lender shall apply such payments to any and all Liabilities relating to such Receivable Advances. Notwithstanding anything herein to the contrary, if a charge which becomes the payments received by Lender with respect to a Receivable Advance, and the Liabilities relating to such Receivable Advance, then such charge shall be immediately due and payable and such amounts to be considered a Liability owed by Borrower to Lender, incurred by the revolving Obligation.
- (7) Borrower shall pay all Liabilities, without notice, which do not concern or relate to a Receivable Advance or a Receivable Advance, including Administrative Charges and other account level charges, in each case on their respective Maturity Dates.
- (8) With respect to payments that relate to a Receivable Advance or a Receivable Advance which caused the outstanding Liabilities owed by Borrower in connection with such Receivable Advance or Receivable Advance, to the extent any, and with respect to payments for all other Liabilities, the order and method of application of such payments shall be at the sole discretion of Lender. Notwithstanding anything herein to the contrary, in the event Lender declares an Event of Default, Lender may apply all subsequent payments, including payments already related to a Receivable Advance or a Receivable Advance, in any manner or order, payments included or received by Lender after 5:00 PM EST may be applied the next Business Day.
- (9) Unless either (i) the Maturity Date for a Receivable Advance has been accelerated as the result of a Maturity Event or a declaration of an Event of Default, or (ii) such Receivable Advance is in the final Period pursuant to the applicable Advance Schedule, a Certificate of such Receivable Advance will automatically be presented at the end of the current Period. Upon the presentation of the Certificate for a Receivable Advance, Borrower shall pay the interest, earned Receivable Fee, any other earned Receivable Advances related fees, and a principal reduction of such Receivable Advance, in each case pursuant to this Note, the applicable Advance Schedule, and any applicable event side or prepayment terms in effect for such Receivable Advance. Additionally, unless (a) the Maturity Date for a Receivable Advance has been accelerated as the result of a Maturity Event or a declaration of an Event of Default, or (b) Borrower has notified Lender that Borrower has disposed of the subject debt of Lender pursuant to its terms by sale or otherwise, Borrower shall be deemed to have requested, and Lender may, in its sole discretion, automatically approve and process, an Extension with respect to such Receivable Advance. With respect to any Extension, the Period, earned interest, earned Receivable Fee, any other earned Receivable Advances related fees, and the principal reduction required to be paid by Borrower for such Extension shall, in each case, be equal in all respects to those of the last Period, and upon the processing of such Extension, Borrower shall pay such earned interest, earned Receivable Fee, any other earned Receivable Advances related fees, and principal reduction of such Receivable Advance, in each case pursuant to this Note, the applicable Advance Schedule, and any applicable event side or prepayment terms in effect for such Receivable Advance. Additionally, for each Extension, Borrower shall be charged any applicable Unlevered Program Fee (including any Unlevered Extension Fee) set forth in the Finance Program Rate, Fee, and Term Schedule for the applicable Finance Program.
- (10) Unless either (i) the Maturity Date for a Receivable Advance has been accelerated as the result of a Maturity Event or a declaration of an Event of Default, or (ii) such Receivable Advance is in the final Period pursuant to the applicable Advance Schedule, a Certificate of such Receivable Advance will automatically be presented at the end of the current Period. Upon the presentation of the Certificate for a Receivable Advance, Borrower shall pay the interest, earned Receivable Fee, any other earned Receivable Advances related fees, and a principal reduction of such Receivable Advance, in each case pursuant to this Note, the applicable Advance Schedule, and any applicable event side or prepayment terms in effect for such Receivable Advance. Additionally, unless (a) the Maturity Date for a Receivable Advance has been accelerated as the result of a Maturity Event or a declaration of an Event of Default, or (b) Borrower has notified Lender that Borrower has disposed of the subject debt of Lender pursuant to its terms by sale or otherwise, Borrower shall be deemed to have requested, and Lender may, in its sole discretion, automatically approve and process an Extension with respect to such Receivable Advance. With respect to any Extension, the Period, earned interest, earned Receivable Fee, any other earned Receivable Advances related fees, and the principal reduction required to be paid by Borrower for such Extension shall, in each case, be equal in all respects to those of the last Period, and upon the processing of such Extension, Borrower shall pay such earned interest, earned Receivable Fee, any other earned Receivable Advances related fees, and principal reduction of such Receivable Advance, in each case pursuant to this Note, the applicable Advance Schedule, and any applicable event side or prepayment terms in effect for such Receivable Advance. Additionally, for each Extension, Borrower shall be charged any applicable Unlevered Program Fee (including any Unlevered Extension Fee) set forth in the Finance Program Rate, Fee, and Term Schedule for the applicable Finance Program.
- (11) Lender may hold any property that proceeds through or made belonging to or payable to Borrower or any of its Affiliates ("Held Funds") and apply such Held Funds to any outstanding Liabilities of Borrower or to any amounts owing by Borrower to any Affiliates of Lender, and Borrower hereby grants to Lender or its Affiliates, as the case may be, a lien on such Held Funds. Lender and its Affiliates may at any time apply any or all of the Held Funds to any outstanding Liabilities of Borrower or to any amounts owing by Borrower to any Affiliates of Lender. Borrower expressly waives any requirement of notice or liability arising from Lender and its various Affiliates.
- (12) Any statement of Borrower's account furnished or made available to Borrower by Lender, in the extent to which it is made in writing by Borrower within ten (10) days after Borrower's receipt of such statement, shall constitute a definitive statement of Borrower's Credit Line and Liabilities as of the date of such statement and shall be binding upon Borrower.
- (13) Borrower hereby expressly authorizes Lender and its Affiliates to communicate with Borrower via electronic communications, email, telephone transmissions, both in a recorded telephone line and/or cell phone, including text messaging, using an internet telephone dialing system or an artificial or pre-recorded voice message, under any other form of communication, for any purpose, including general business matters, account administration, marketing materials, collection, and/or any other communication needs. Borrower agrees that such agreed protocols

shall extend to any and all of the contact information that Borrower has provided herein, including physical and email addresses, phone numbers, fax numbers, etc., and to such other addresses, phone numbers, email addresses, website sites, social media platforms, etc., that Borrower may provide to Lender or that Lender may obtain from any third party at a later date.

- (e) As long as Borrower is not in default of this Note or any other Loan Document, Borrower may call Lender's Planned Inventory to loan side before in the Ordinary Course of Business, but nothing herein shall be deemed to waive or release any interest Lender may have hereunder or under any other agreement in any payments or repayments of such Lender's Planned Inventory. Upon the sale of any Unit of Lender's Planned Inventory, Borrower shall hold the proceeds from such sale in trust for the benefit of Lender, and Borrower shall pay to Lender, in accordance with this Note and the other Loan Documents, an amount equal to the unpaid balance of the Liabilities relating to such Unit of Lender's Planned Inventory.
- (f) Borrower shall allow Lender and its representatives to access Borrower's books and records at Borrower's Place of Business and such other places as any Lender's Planned Inventory may be located, in order to conduct audits of Borrower's Lender's Planned Inventory, in such case without prior notice to Borrower of such audits. Borrower shall be responsible for and agree to pay all of Lender's expenses in conducting such audits.
- (g) Each Unit of Lender's Planned Inventory must be physically verified at the time of any audit conducted by or on behalf of Lender to be at Borrower's Place of Business, or such other place as Lender may authorize. In the event that any Unit of Lender's Planned Inventory is not so verified, Lender may, in its sole discretion, provide Borrower an opportunity to produce such Unit at Lender's Planned Inventory at Borrower's Place of Business, or such other place as Lender may authorize.
- (h) Borrower may request from Lender, for a legitimate business purpose, the Title to a Unit of Lender's Planned Inventory, but Lender reserves the right to grant or deny such request in its sole discretion. In the event Lender grants any such request, any Title provided to Borrower as to any other Person on Borrower's behalf, must be returned to Lender by the close of business on the seventh (7<sup>th</sup>) day after the date of Lender's release of such Title.
- (i) Borrower and each Owner authorize Lender to obtain and share credit information relating to Borrower and its Owners from credit and credit bureaus, financial institutions, trade creditors, utilities, and others and to conduct such other credit investigations that Lender in its sole discretion deems necessary. The individuals signing below on behalf of Borrower expressly authorize Lender to obtain its or her customer credit report from time to time at Lender's discretion, and expressly release any such customer credit report that may have been obtained by or on behalf of Lender prior to the Effective Date. Borrower also authorizes Lender to contact any third parties to discuss information, including information contained in Lender's application, for the purpose of, among other things, obtaining information agreements and perfecting Lender's security interest. Further, if a Credit Line is granted, Borrower and each Owner authorize Lender to review Borrower's account periodically, which may include obtaining additional credit information on Borrower and each Owner through any available medium.
- (j) Borrower's account is subject to "MSR" fees in the amount stated in the Finance Program Rate, Fee, and Term Schedule or the maximum amount permitted by Law for such check or ACH based by Borrower which is subsequently returned for insufficient funds, in addition to any charge or fee imposed by Borrower's bank or Lender's depository institution.
- (k) Lender may process checks electronically, at first presentation and any re-presentations, by transmitting the amount of the check, routing number, account number, and check serial number to Borrower's financial institution. By submitting a check for payment, Borrower authorizes Lender to initiate an electronic debit from Borrower's bank account. When Lender processes Borrower's check electronically, Borrower's payment may be debited from Borrower's bank account as soon as the next day Lender receives Borrower's check.
- (l) Borrower's account is subject to a late fee in the amount stated in the Finance Program Rate, Fee, and Term Schedule or the maximum amount permitted by Law for any Unit of Lender's Planned Inventory for which Borrower fails to make payment under this Note or any other Loan Document when due. Borrower acknowledges and agrees that the late fee charged by Lender is a reasonable estimate of Lender's additional administrative burden and costs in stated fee is the fee and consequences to Lender associated with a late payment.
- (m) Borrower's account is subject to Administrative Charges. Borrower acknowledges and agrees that any such Administrative Charge charged by Lender is permitted under this Note and the other Loan Documents, and Borrower consents to the assessment of any such Administrative Charge to Borrower's account.
- (n) Borrower's account is subject to Universal Program Fees. Lender establishes and publishes the "Universal Program Rate, Fee, and Term Schedule" for each Finance Program applicable to Borrower's Credit Line by posting the same on the Internet Portal. Borrower may request a copy of the Finance Program Rate, Fee, and Term Schedule from Lender in writing at any time. All interest or penalty applicable rates and fees and any amendments to the Terms and Conditions shall be published clearly, interpreted fairly, by reference and made a part of this Note and any other applicable Loan Documents. The rates and fees are applied to Borrower's Liabilities under this Note, any amended Terms and Conditions, or any applicable event only as promotional items to effect with regard to its eligible Finance Advance or Receivable Advances shall be (i) the applicable rates and fees set forth on the applicable Advance Schedule; (ii) the rates, fees, and amendments to the Terms and Conditions most recently published on the applicable Finance Program Rate, Fee, and Term Schedule; and (iii) the rates, fees, terms, and conditions set forth in the applicable marketing materials outlining event only under promotional terms. Lender may amend the rates, fees, and Terms and Conditions from time to time, at Lender's sole discretion, and without additional notice to

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A receipt 06/19/20

MasterCard Payment Processing of Note and Loan and Security Agreement (v. 1.0)



Borrower shall limit the publication of such amendments on the Disclosure Portal.

- (f) Lender shall make and publish the Lender Guide on the Disclosure Portal. Borrower acknowledges and agrees that the Lender Guide and the attached Social Media are not part of this Note or any other Loan Document, are for informational purposes only, and do not create any new or additional contract rights or obligations for Borrower or Lender. Borrower acknowledges and agrees that the Lender Guide and the attached Social Media is subject to change by Lender at any time without notice. To the extent the Lender Guide and the attached Social Media is distributed to create or provide additional contractual rights for Borrower and a contract exists between this Note or any other Loan Document, on the one hand, and the Lender Guide, on the other hand, the provision of this Note or the other Loan Document, as the case may be, shall prevail.
  - (g) Borrower agrees, covenants, represents and warrants, and agrees to defend, protect, and defend against, and expressly agrees that this Note and all payments coming due under it and any other Loan Document may be extended or modified from time to time without in any way affecting Borrower's liability under this Note or any other Loan Document. Borrower and Guarantor understand that Lender may, at any time and without notice to Borrower, with or without cause, demand that this Note immediately be paid in full. The demand under this Note does not limit Lender's exercise of remedies upon or threat of default by Borrower, and Borrower and Guarantor acknowledge that upon Lender's declaration of an event of default, all liabilities under this Note and the other Loan Documents shall immediately accelerate and Lender may, at any time and without notice to Borrower, demand immediate payment of all liabilities under this Note and the other Loan Documents and take such further action as may be contemplated under Section 1 or otherwise permitted by Law or its equity. Borrower shall have the right to pay all liabilities in full at any time.
  - (h) Notwithstanding Section 4(f), upon any disposition of a Unit of Lender Placid Inventory, whether by sale or otherwise, of the proceeds by Borrower for any other Person on behalf of Borrower) of full or partial payment by or on behalf of the purchaser of such Unit of Lender Placid Inventory, Lender may, without notice to Borrower and in Lender's sole discretion, deduct a Minority Share with respect to the related Minority Advance.
  - (i) Notwithstanding Section 4(f), upon any receipt by Borrower of full payment under any Receivable that is subject to a Receivable Advance, or upon Borrower's declaration of a default under any such Receivable, Lender may, without notice to Borrower and in Lender's sole discretion, deduct a Minority Share with respect to the related Receivable Advance.
  - (j) The receipt by Lender or Borrower, or any third party on Borrower's behalf, of proceeds related to any Unit of Lender Placid Inventory shall constitute conclusive proof of the sale or other disposition of such Unit of Lender Placid Inventory.
6. **WARRANTY OF QUALITY.** The completion of any of the following events shall be considered an event of default under this Note and the other Loan Documents (each, a "Warranty Default"):
- (a) Borrower or any Guarantor fails to perform any of its obligations, covenants or agreements under this Note or under any other Loan Document, including any obligation to repay any liability when due and Borrower's obligation to pay upon demand any outstanding liability under this Note.
  - (b) Borrower or any Guarantor breaches or otherwise violates any provision of this Note or any other Loan Document.
  - (c) Borrower makes any representation or warranty to Lender, or provides to Lender any certificate, affidavit, financial statement, report, notice, or other writing, which is false or misleading in any material respect when made or delivered.
  - (d) Any damage or destruction of any Inventory and appropriate business naming Lender as "Last Paper" is not in effect as required under Section 4(f).
  - (e) Borrower or any Guarantor, or any of their respective Parent Companies, has defaulted in the payment or performance of any debt or obligation under any other agreement, whether to Lender or to a third party.
  - (f) Borrower or any Guarantor, or any of their respective Parent Companies, becomes insolvent or commences the liquidation of a business, reorganization, or other measures for such Borrower, Guarantor, or Parent Company, as the case may be, or the any property belonging to any of the foregoing Person or such Borrower, Guarantor, or Parent Company, as the case may be, makes a general assignment for the benefit of its creditors or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency Law, or a dissolution or liquidation proceeding, is commenced by or against such Borrower, Guarantor, or Parent Company, in the case may be.
  - (g) Any material change in the management, ownership, or control of Borrower or its Parent Company owner (under such material change has been determined to be written by Lender).
  - (h) The voluntary or involuntary dissolution, death, or incompetence of Borrower or any Guarantor, or any of their respective Parent Companies.
  - (i) Any change in the financial condition of Borrower or any Guarantor, or any of their respective Parent Companies, that Lender in good faith

*Agencies and others*

- (1) Borrower or any Guarantor, or any of their respective Parent Companies, warrants in writing that it is capable to pay its debts as they become due.
  - (2) Lender in good faith deems itself borrower's beneficiary.
7. **RIGHTS AND REMEDIES.** Upon any event of Default, Lender may, at its option and without notice to Borrower, exercise any or all of the following rights in a separate, successive, or concurrent fashion, and Lender's exercise of any right hereunder shall not preclude Lender from pursuing other rights and remedies in conjunction therewith or at a later time:
- (a) Demand immediate payment of all liabilities under this Note and the other Loan Documents and all other liabilities and amounts owed to Lender and its Affiliates by Borrower and its Affiliates. Lender shall have all rights and remedies available hereunder and under the other Loan Documents, and all rights and remedies available to Lender at law or in equity, including the rights and remedies of a secured party under the UCC. These rights and remedies include the right to accept any tendered Assignment to satisfy its Borrower's present and/or future legal claims, but without there, and in the protection of and to satisfy any Collateral, and to notify any amount debtor or other Person obligated on Collateral to make payment or otherwise make performance to it for the benefit of Lender. Lender shall have the right to grant any third parties, including creditors, governmental agencies, Borrower's financing institutions, common law assignees, creditors, assignees, other financial institutions, other lenders, Auction House, Agency, and such other Persons as Lender may deem to be in its best interest, and in their own interest as is necessary, in Lender's sole discretion, for any reason, including for purposes of and related to collection of any liabilities under this Note and the other Loan Documents. At Lender's request, and in the event Borrower may lawfully do so, Borrower shall assemble, prepare for removal, and make available to Lender a phone designated by Lender which is reasonably convenient for Lender and Borrower and Collateral as Lender may request.
  - (b) Initiate proceedings to appoint a receiver in any court of competent jurisdiction. To the extent permitted by Law, Borrower waives the right to object and having effect appointment of a receiver and consents to such appointment without requiring Lender to post a bond.
  - (c) To the extent permitted by Law, Borrower gives consent to Lender to present in any action to collect on or amounts against any one of all kinds that Borrower or its Affiliates may have posted with any governmental institution or third parties.
  - (d) Without limiting the foregoing, Lender may take control of any funds generated by any Collateral, and in Lender's name or Borrower's name, demand, collect, receipt the funds, assign, use the funds, except release of proceeds, or utilize upon any Collateral. Borrower waives any and all rights it may have in such funds to claims by Lender of any Collateral. Borrower agrees that proceeds sale of any Lender Financial Inventory of the nature then owed to Lender or such Lender Financial Inventory, less costs reasonably incurred by Lender in preparation of disposition of such Lender Financial Inventory, shall be a commercially reasonable method of disposition of such Collateral. Additionally, Borrower further agrees that any inventory Collateral represented or otherwise assigned by Lender after its event of Default may be disposed of by Lender, in Lender's sole discretion, in any manner or on any terms or conditions that may be in the interest of Lender, or of any National Auto Auction Association member, and, in each case, any such sale shall be deemed commercially reasonable for all purposes. Borrower shall be liable to Lender for any deficiency resulting from Lender's disposition of the Collateral. Borrower agrees that the Collateral is of the type customarily sold on a consignment basis and that Lender therefore has no obligation to notify Borrower prior to a sale of any Collateral. Lender shall not be required to surrender any assets in favor of Borrower. Lender has no obligation to pursue any third party for any liability or obligation owed to Borrower. Borrower further agrees to pay all reasonable attorney's fees and other collection costs incurred by Lender and its Affiliates in enforcing this Note and any other Loan Document after any event of Default. To the extent not prohibited by Law, Borrower waives all assignment, valuation, anti-deficiency, automatic, exemption, and every other law or statute in effect, and releases all right to oppose after payment is made.
8. **LOAN DOCUMENTS:** In addition to the execution and delivery of this Note, upon the request of Lender, Borrower shall execute (or cause the execution of) the following additional documents in connection with Borrower's Credit Line (together with all other documents and instruments executed by Borrower in connection with this Note or Borrower's Credit Line, the "Loan Documents"), each of which shall be incorporated herein by reference and made a part of this Note: (a) a Power of Attorney in favor of Lender; (b) prior to Lender making any Advances under this Note, an Advance Schedule for each advance set of funds for the Finance Program applicable to Borrower, which may be amended from time to time; (c) such documents of all of Borrower's liabilities under this Note and the other Loan Documents as Lender may request, including Covenants of all terms of Borrower; (d) a Reserve Agreement in favor of Lender; and (e) prior to Lender authorizing Borrower to place any Lender Financial Inventory as assignment with another Person doing a Consignment Agreement acceptable to Lender.
9. **ASSIGNMENT:** This Note and any other Loan Document may be assigned by Lender without notice to Borrower, but Borrower may not assign this Note or any other Loan Document without the prior written consent of Lender.
10. **THIRD PARTY BENEFICIARIES:** Neither this Note nor any other Loan Document is intended to create upon any Person other than the Parties any rights or remedies hereunder; **HEREBY, HOWEVER,** that the rights and remedies afforded to Lender under Articles 9, 10, 11, 12, 13, 14 and 15 shall inure to the benefit of the Affiliates of Lender and such Affiliates shall be deemed third party beneficiaries of the provisions herein.

11. **INDEMNIFICATION.** Borrower shall, at its expense, defend, indemnify and hold harmless Lender and its Affiliates, and each of their respective directors, officers, principals, partners, shareholders or holders of any ownership interest, as the case may be, employees, representatives, attorneys, and agents (the "Lender Parties") from and against any and all claims, judgments, losses, damages, demands, payments, fees, costs, expenses (including reasonable attorneys' fees and court costs), and liabilities of any nature or description incurred by a Lender Party in the course of trying them or causing to be tried any of the following: (i) any personal injury or property damage caused by Borrower or any of its Representatives; (ii) any lawsuit by Borrower or its Affiliates or any other Loan Document, including the breach of any representation, warranty, or other agreement contained in this Note or in any other Loan Document; and (iii) Borrower's operation of its business or any of Borrower's operations or subsidiaries.
12. **NO JOINT VENTURE, PARTNERSHIP, OR AGENCY.** Nothing contained in this Note or in any other Loan Document shall constitute Lender or Borrower any interest in, or subject either of them to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of the other. This Note does not constitute and shall not be construed as a joint venture, partnership, or agency between Lender and Borrower. Nothing in this Section 12 shall limit or restrict the respective obligations and undertakings of Lender and Borrower hereunder.
13. **AMENDMENTS; MERGERS.** This Note and the other Loan Documents are intended by the Parties to be an amendment to and replacement of any prior Demand Promissory Note and Loan and Security Agreement or similar document or instrument (including any prior promissory note, loan and security agreement or similar contract) between Lender and Borrower. With the exception of the amendments and modifications that Lender is entitled to make without the prior written consent of Borrower pursuant to this Note or any other Loan Document, this Note may be modified or amended only upon the written consent of Lender and Borrower. It is the intent of the other Loan Documents, with the exception of the amendments and modifications that Lender is entitled to make without the prior written consent of Borrower pursuant to this Note or any other Loan Document, such other Loan Documents may be modified or amended only upon the written consent of Lender and the Parties to whom such amendments relate. Additionally, the Finance Program, Lender's Office, descriptions of specific types of Lender's services, products and terms of Advances, Maturity Dates, Repayment, Interest, Fees Rates, Administrative Charges, Lender Universal Program Fee, the Fee, NFF Fee, and other charges allowed by this Note or any other Loan Document may be proven by the records kept by Lender. Notwithstanding the foregoing, any advance under loan originated pursuant to one or more agreements between Borrower and Lender Services Corporation under its then current Administrative Program, as prior to the Effective Date for which indebtedness from Borrower remains outstanding as of the Effective Date, shall remain subject to the terms and conditions of such prior agreement(s) for all intents and purposes until such indebtedness has been fully and finally repaid and satisfied in full.
14. **EXECUTION.** The Parties understand and agree that Lender may execute this Note and any other Loan Documents by affixing the signature of an authorized representative of Lender via signature stamp. Additionally, Lender may execute this Note and any other Loan Documents by affixing to this Note or such other Loan Document, as the case may be, an electronic or digital signature, which electronic or digital signature shall be as fully operative as the handwritten signature of Lender. Any electronic or digital signature affixed to this Note or any other Loan Document by Lender shall be deemed to satisfy all requirements imposed on electronic or digital signatures under the UCC, the Electronic Signatures in Global and National Commerce Act (the "ESIGN Act"), and any other similar laws relating to the validity or enforceability of electronic or digital signatures, and such electronic or digital signature shall not be deemed legal effect, validity, or enforceability solely because it is in electronic or digital form. Notwithstanding the foregoing, Borrower may execute this Note and any other Loan Documents only by original signature of an authorized officer of Borrower, whose signature is submitted by Lender. Lender may, in its sole discretion, permit Borrower under any Creditline to execute this Note and any other Loan Documents by affixing to this Note or such other Loan Document, as the case may be, an electronic or digital signature. Borrower understands and agrees that any electronic or digital signature of Borrower or any Guarantor shall not be as fully operative as the handwritten signature of Borrower or Guarantor, as the case may be, and shall be deemed to satisfy all requirements imposed on electronic or digital signatures under the UCC, the ESIGN Act, and any other similar laws relating to the validity or enforceability of electronic or digital signatures, and such electronic or digital signature shall not be deemed legal effect, validity, or enforceability solely because it is in electronic or digital form. A facsimile or photocopied reproduction of a signature on this Note and any other Loan Documents shall be deemed a digital signature for all intents and purposes. This Note and the other Loan Documents may be executed by the Parties in one or more counterparts which, collectively, shall constitute one and the same agreement.
15. **NOTICES.** All notices, demands and requests required or permitted to be given under this Note and any other Loan Document shall be (a) in writing, (b) sent by electronic mail with receipt confirmed by telephone (but only if a facsimile number is provided below), delivered by personal delivery or sent by commercial delivery service or certified mail, return receipt requested, (c) deemed to have been given on the date sent by facsimile with receipt confirmed by telephone, the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows (or, in the case of Lender, to any other subsequent address that Lender may provide to Borrower through written notice, via the Borrower Portal, or otherwise) for purposes of serving notice, demands or requests:

As to Lender:

NextGen Capital, Inc., 1230 City Center Drive, Suite 100, Carmel, IN 46033  
Telephone (317) 371-3751 Facsimile (317) 371-3757

with a copy to:

NextGen Capital, Inc., 1230 City Center Drive, Suite 100, Carmel, IN 46033  
Telephone (317) 371-3751 Facsimile (317) 371-3757  
Attention: Legal Department

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Amount \$64,000

NextGen Demand Promissory Note and Loan and Security Agreement (N 1.8)



If to Borrower: The Lenny Blue Inc  
255 Grand Ave., Lehigh, NY 09068  
Telephone (201) 346-9708 Facsimile (201) 346-9701

14. **NO WAIVER.** No failure or delay by Lender in exercising any right, power, or privilege or the granting of an extension by Lender with respect to any Term or Condition will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege by Lender.
15. **TERMINATION.** No termination of this Note shall alter Borrower's obligations and liabilities relating to Advances and amounts owed to Lender prior to the effective date of such termination, and all rights and remedies, including the priority interest granted herein and the right to offset any liability under this Note or any other Loan Document, under Borrower's assumed and assumed presumptions of affirmative action or nonaffirmative action to such party or parties.
16. **LEGAL FEES AND COLLECTION COSTS.** Borrower shall pay to Lender all reasonable legal fees, expenses, and collection costs incurred by Lender, Lender's Attorneys, and Lender's Representatives as a result of any breach of Default, Borrower's failure to perform any obligation or satisfy any liability under this Note or any other Loan Document, under Borrower's assumed and assumed presumptions of affirmative action or nonaffirmative action to such party or parties.
17. **SEVERABILITY.** Any provision of this Note or any other Loan Document that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be inoperative to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Note and the other Loan Documents or affecting the validity or enforceability of any provision of this Note or any other Loan Document in any other jurisdiction.
18. **GOVERNING LAW.** Except with respect to the interpretation or enforcement of the arbitration and other provisions set forth in Section 23 (which shall be governed by the Federal Arbitration Act), the validity, enforceability, and interpretation of this Note and the other Loan Documents shall be governed by the Internal Laws of the State of Indiana, without regard to conflicts of Laws provisions thereof.
19. **JURISDICTION AND VENUE.** As evidenced by Borrower's signature herein, Borrower consents to the process of jurisdiction and venue of the state and federal courts of Marion County and Hamilton County, Indiana, and agrees that any and all claims or disputes pertaining to this Note or any other Loan Document, or to any matter arising out of or related to this Note or any other Loan Document, initiated by Borrower against Lender, shall be brought in the state or federal courts of Marion County or Hamilton County, Indiana. Further, Borrower expressly consents to the jurisdiction and venue of the state and federal courts of Marion County and Hamilton County, Indiana, as to any legal or equitable action that may be brought in such court by Lender, and waives any objection based upon lack of personal jurisdiction, improper venue, or forum non conveniens with respect to any such action. Borrower acknowledges and agrees that Lender reserves the right to initiate and prosecute any action against Borrower in any court of competent jurisdiction, and Borrower consents to such forum as Lender may elect.
20. **DISPUTE RESOLUTION WAIVER OF CLASS ACTION RIGHTS.**
- (a) In most cases, any dispute or claims that Borrower may have can be resolved quickly and in Borrower's satisfaction by contacting Lender regarding such dispute or claims. In the unlikely event that Lender is unable to resolve a dispute or claim that Borrower may have, Borrower agrees to arbitrate any such dispute or claim. This agreement to arbitrate is intended to be broadly interpreted, and includes (i) all disputes, claims and controversies arising out of or relating to this Note or any other Loan Document or any aspect of Borrower's relationship with Lender, whether based in contract, tort, equity, fraud, misrepresentation or any other legal theory; (ii) all disputes, claims and controversies that may have arisen before this Note or any prior contract or agreement between Borrower and Lender (including all disputes, claims and controversies relating to any marketing or advertising by Lender); and (iii) any disputes, claims and controversies that may arise after the inception of this Note and any other Loan Document. Additionally, Borrower acknowledges that Lender may first shall in no event be required to arbitrate any dispute or claim that it may have against Borrower, with any such arbitration being governed by the provisions of this Section 20. Borrower, at its election, may opt-out of the arbitration provisions set forth in Sections 20(a), 20(b) and 20(c) by providing written notice of its election to opt-out no later than sixty (60) days after the Effective Date, which notice shall be provided to Lender pursuant to Section 15 ("Opt-Out Notice"), provided that such Opt-Out Notice shall become effective only upon Borrower's receipt of written confirmation from Lender that such Opt-Out Notice has been received by Lender within the required time period. Borrower acknowledges and agrees that, irrespective of any Opt-Out Notice or any written confirmation thereof, Borrower shall in all events be subject to the provisions of Section 20(b).
- (b) ANY ARBITRATION PROCEEDING UNDER THIS NOTE WILL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS AND CLASS ACTIONS OF ANY KIND (WHETHER PURSUED THROUGH ARBITRATION OR THROUGH THE COURTS) ARE NOT PERMITTED. BORROWER AGREES THAT IT MAY BRING CLAIMS AGAINST LENDER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURSUED CLASS OR REPRESENTATIVE PROCEEDING. BORROWER AGREES THAT, BY ENTERING INTO THIS NOTE, BORROWER IS WAIVING ITS RIGHT TO PARTICIPATE IN ANY CLASS ACTION OR OTHER SIMILAR REPRESENTATIVE PROCEEDING, UNLESS CONSENTED TO IN WRITING BY LENDER. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S



CLAIMS, AND MAY NOT OTHERWISE PRESENT OVER ANY FORM OF A REPRESENTATIVE OR CLAIM PROCEEDING. BORROWER ACKNOWLEDGES AND AGREES THAT THE SIZE OF BORROWER'S CREDIT LINE, THE INTEREST RATE TO WHICH ADVANCES ARE SUBJECT AND OBTAIN FROM CHARGED TO BORROWER, AS WELL AS THE SIZE AND DATES OF FUTURE ADVANCES, ARE SUBJECT TO AND NEGOTIATED BY BORROWER, AND THAT SUCH FACTORS WILL AND DO VARY AMONG BORROWERS.

- (c) Any dispute or claim subject to arbitration pursuant to this Section 14 shall be submitted to binding arbitration administered by the Judicial Arbitration and Mediation Service ("JAMS") pursuant to its Comprehensive Arbitration Rules and Procedures as then in effect (the "JAMS Comprehensive Rules"). Notwithstanding, that any dispute or claim that is subject to arbitration pursuant to this Section 14 and that involves disputes or claims where the aggregate amount reasonably in dispute or controversy is less than \$100,000, shall be submitted to binding arbitration administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures as then in effect (the "JAMS Streamlined Rules"). The disputes and claims subject to arbitration pursuant to this Section 14 will be resolved by a single arbitrator selected pursuant to the JAMS Comprehensive Rules or the JAMS Streamlined Rules, as the case may be. The arbitrator shall be bound by and shall strictly enforce the terms of this Note and the other Loan Documents including not least, without limitation, any terms or provisions of this Note or any other Loan Document or any other contract or document between Borrower and Lender. The arbitrator shall not have the power to award to Borrower any damages that are excluded or that have been waived by Borrower under this Note or any other Loan Document and Borrower has previously waived any claim that it may have therein. The arbitrator shall not have the power to order pre-hearing discovery of documents or the taking of depositions. The arbitrator shall render a written decision within six (6) months after being selected. Any arbitration will be held in Indianapolis, Indiana (or its greater metro area). Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration pursuant to JAMS. The arbitrator may, in his or her discretion, award costs and fees to the prevailing Party. The result of any arbitration shall be final and binding upon the Parties, judgment upon any arbitrator award may be entered in any court having jurisdiction over the award or over the applicable party or its assets.
- (d) This Note and the other Loan Documents constitute transactions in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Section 14, notwithstanding the provisions of Section 14.
23. WAIVER OF JURY TRIAL. AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, LENDER AND BORROWER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY OTHER LOAN DOCUMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, STATEMENT, WHETHER ORAL OR WRITTEN, OR ACTIONS OF LENDER OR BORROWER. WHETHER LENDER OR BORROWER SHALL SEEK TO CONSOLIDATE, BY COMMERCE CLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED, THESE PROVISIONS SHALL NOT HAVE BEEN WAIVED BY EITHER PARTY NOR BY EITHER PARTY'S LENDER AND BORROWER.
24. LIMITATION OF LIABILITY. IN NO EVENT SHALL ANY LENDER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, INCIDENTAL, MULTIPLE OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY ADVANCES MADE BY LENDER HEREUNDER OR THEREUNDER), EVEN IF SUCH LENDER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT SHALL THE LENDER PARTIES, COLLECTIVELY, BE LIABLE FOR ANY DAMAGES UNDER THIS NOTE OR ANY OTHER LOAN DOCUMENT (OR IN CONNECTION WITH ANY ADVANCE BY LENDER HEREUNDER OR THEREUNDER) THAT EXCEEDS IN THE AGGREGATE AN AMOUNT EQUAL TO THE SUM OF THE INTEREST AND FEE/COMPLANTIES ACTUALLY PAID TO LENDER BY BORROWER UNDER THIS NOTE DURING THE FIFTEEN (15) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM AT ISSUE (OR, IN THE CASE OF MULTIPLE EVENTS, THE FIRST SUCH EVENT GIVING RISE TO THE CLAIM AT ISSUE).
25. WAIVER OF SOME BORROWER WAIVE, TO THE FULL EXTENT PERMITTED BY LAW, ANY BOND OR SURETY OR SECURITY ON SUCH BOND WHERE MONEY, BUT FOR THIS WAIVER, IS REQUIRED OF LENDER DURING ATTEMPTS TO RECOVER COLLATERAL OR OTHERWISE.
26. CALIFORNIA BORROWERS. In the event Borrower's Place of Business is in the State of California, Borrower acknowledges and agrees that any Initial Advances made under this Note must be in the amount of at least Five Thousand Dollars and Five Cents (\$5,000), and Borrower shall advance request for any Initial Advances under this Note in an amount less than Five Thousand Dollars and Five Cents (\$5,000).
27. DISCLAIMER. THE DISCOVERY PORTAL LICENSED OR PROVIDED HEREUNDER IS PROVIDED AS A CONVENIENCE TO BORROWER AND ON AN "AS-IS" BASIS. LENDER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, ACCURACY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LENDER MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE DISCOVERY PORTAL WILL OPERATE ERROR-FREE OR ON AN UNINTERRUPTED BASIS, AND LENDER SHALL IN NO EVENT BE LIABLE OR RESPONSIBLE FOR ANY OUTAGE OR OTHER LOSS OF FUNCTIONALITY OR CONNECTIVITY WITH RESPECT TO THE DISCOVERY PORTAL, AND NO SUCH OUTAGE OR OTHER LOSS OF FUNCTIONALITY OR CONNECTIVITY SHALL EXCUSE ANY FAILURE BY BORROWER TO

**TIMELY PERFORM ALL OF ITS OBLIGATIONS TO LENDER UNDER THIS NOTE AND THE OTHER LOAN DOCUMENTS.**

34. **DESCRIPTIVE HEADINGS; INTERPRETATION.** The descriptive headings herein are for convenience of reference only and shall not control or affect the meaning or construction of any provision of this Note. As used in this Note and the other Loan Documents, the terms "include," "includes," and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. Words (including the defined terms set forth in Article 1) of one gender shall be held to include the other gender in the singular. Any reference in this Note or in the other Loan Documents to a particular statute or regulation shall be deemed to include all amendments thereto, rules and regulations thereunder and any successor statute, rule, or regulation, or published clarifications or interpretations with respect thereto, in each case as in effect from time to time.

35. **EFFECTIVE DATE OF OTHER LOAN DOCUMENTS.** Unless otherwise stated in the applicable Loan Document, the effective date of any Loan Document executed by a party shall be the later of (a) the Effective Date of this Note, or (b) the date of Borrower's execution thereof as set forth below. Borrower's signature thereto (or, in the case of any Guarantor, the date of Guarantor's execution thereof as set forth below Guarantor's signature thereto), in the event that the date of Borrower's or Guarantor's execution of any Loan Document is not set forth below Borrower's or Guarantor's signature below, then the effective date of such Loan Document shall be deemed to be the Effective Date of this Note.

WHEREFORE, the Parties, by their respective duly authorized representatives, have executed this Demand Promissory Note and Loan and Security Agreement on the date set forth below.

**BORROWER:**

The Livery New Inc.

By: 

Name:

Title:

Date:

**GUARANTOR ACKNOWLEDGMENT AND CONSENT TO THE FOREGOING:**

Guarantor (Sign):

Name (Print):

**LENDER:**

INDYCAR CAPITAL, INC.

By: 

Name:

Title:

Date:

## APPENDIX A

- (1) "Administrative Charge" shall mean any expense charged by Lender to Borrower that is reasonable or necessary, in Lender's sole discretion, to administer or monitor Borrower's account, to preserve any Collateral, or to enforce any Liabilities under this Note.
- (2) "Advance" shall mean any disbursement (loan or payment) in any amount, for any purpose, made pursuant to this Note by Lender to Borrower or as Borrower's behalf to any third party.
- (3) "Advance Schedule" shall mean any schedule or other document submitted pursuant to this Note, in each case as modified from time to time, which includes the applicable specific terms regarding Borrower's Monthly Payments, Repayment Date, (Current Rate of Interest, Periodically Repaid Amount, Amount in Charge, required principal reduction to obtain a Certificate of the Maturity Date, and number of available Commitments).
- (4) "ACH" shall mean any payment by or on behalf of Borrower to Lender made via a nationwide electronic funds transfer network processing automatic debit and credit entries to or from Borrower's bank account.
- (5) "Affiliate" shall mean, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first-named Person (which shall, for purposes of this Note, include any parent company and any direct or indirect subsidiary of such first-named Person) and, if such first-named Person is a natural person, also includes any member of such first-named Person's immediate family. For purposes of this definition, the term "control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.
- (6) "Base Rate" shall mean the greater of the variable rate of interest or the fixed rate of interest as stated in the Payment Program Rate, Fee, and Term Schedule.
- (7) "Borrower" shall have the meaning set forth in the Preamble.
- (8) "Borrower's Place of Business" shall mean the primary place where the Collateral and Borrower's books and records are kept, and where Borrower's operations are conducted.
- (9) "Business" shall mean Borrower's business, as it relates to the purchase and sale, lease, or use of inventory under the origination of any Borrowing.
- (10) "Business Day" shall mean any day other than a Saturday, Sunday, federal holiday or day on which banking institutions in Detroit, Michigan are authorized or obligated by Law or executive order to be closed.
- (11) "Check" shall mean any payment by or on behalf of Borrower to Lender not made in cash, via certified funds, wire transfer, or ACH.
- (12) "Collateral" shall have the meaning set forth in Section 1(a).
- (13) "Commercial Insurance Program" shall mean that certain program to which Borrower may participate in lieu of providing third party insurance as required under this Note.
- (14) "Current Rate" shall mean that rate of interest as stated on the applicable Advance Schedule.
- (15) "Credit Line" shall mean Borrower's borrowing line of credit with Lender pursuant to and under this Note.
- (16) "Default Date" shall mean that date by Lender, in its sole discretion, is Borrower of additional time extending the Maturity Date for no additional fee to it. The number of additional Commitments shall be as stated on the applicable Advance Schedule.
- (17) "Electronic Portal" shall mean that certain web-based portal located at <http://www.americanexpress.com> (or any similar successor portal, which is or will be owned, operated or maintained by Lender and, subject to the Terms and Conditions, to which Borrower shall have access at any time as determined by Lender).
- (18) "Employment Date" shall have the meaning set forth in the Preamble.
- (19) "Equity Asset" shall have the meaning set forth in Section 14.
- (20) "Expense Account" shall have the meaning set forth in Section 4.
- (21) "Extension" shall mean that grant by Lender, in its sole discretion, to Borrower of additional time extending the Maturity Date beyond the last

Period as stated on the applicable Advance Schedule.

- (27) "Escrow Program" shall mean any escrow program entered into by Lender and available to Borrower for the funding of Inventory or Receivables pursuant to an Advance under this Note.
- (28) "Escrow Program Book, Fee and Term Schedule" shall mean the current schedule of applicable escrow interest rates, fees and term and condition amendments for each Escrow Program, including Uniform Program Fees, fees that are subject to reduced amounts or ACHT payments due to insufficient funds; the Basic Rate Childcare Protection Program fees; and notice of amendments to the Terms and Conditions, published by Lender on posting such schedule of such interest rates and fees and notice of amendments to the Terms and Conditions on the Discover Portal.
- (29) "Escrow Advance" shall mean an Advance made pursuant to this Note relating to a Unit of Inventory to be offered for sale, lease or rent, or loan or secured by Borrower in the Ordinary Course of Business.
- (30) "Escrow Date" shall mean (i) for a Uniform Escrow Program, the date that, regardless of the date the Escrow Advance is actually requested or funded; and (ii) for a Specific Escrow Program, the date the request for the Escrow Advance is received by Lender, regardless of the date such Escrow Advance is actually funded.
- (31) "Escrow Fee" shall mean the fee charged by Lender to Borrower, as set forth on the applicable Advance Schedule, for each Unit of Lender Financed Inventory for each Period, including any Extension thereof.
- (32) "Extension" shall mean any Period extending this Note as a Condition or any Period extending any Contingency pursuant to this Note.
- (33) "Interest" shall mean the aggregate rate of interest which accrues on all Liabilities owed by Borrower to Lender under or arising out of this Note or the other Loan Documents.
- (34) "Inventory" shall mean all Units held by Borrower for sale or lease, or loan, or sold or leased or rented by Borrower. "Inventory" includes Loan or Secured Inventory.
- (35) "LALR" shall have the meaning set forth in Section 5.2(f).
- (36) "LALR Change Schedule Rates" shall have the meaning set forth in Section 5.2(f).
- (37) "LALR Market Rates" shall have the meaning set forth in Section 5.2(f).
- (38) "Law" or "Laws" shall mean applicable common law and any applicable statute, permit, ordinance, code or other law, rule, regulation or order enacted, adopted, promulgated or applied by any governmental authority, all as in effect from time to time.
- (39) "Lender" shall have the meaning set forth in the Preamble.
- (40) "Lender Escrow Inventory" shall mean all Units for which an Advance has been made under this Note.
- (41) "Lender Guide" shall mean those procedures and instructions for the use of Lender's system and the Discover Portal, in each case as modified by Lender from time to time in Lender's sole discretion, which are available in hard copy upon Borrower's written request to Lender or by Borrower logging onto the Discover Portal.
- (42) "Lender Parties" shall have the meaning set forth in Section 11.
- (43) "Liabilities" shall mean any and all Advances, debts, demands, obligations, Administrative Charges, Lender Uniform Program Fees, interest, Escrow Fees, NEF Fees, late fees, charges, expenses, discounts, fees, costs of collection, reasonable and lawful costs, charges, fees, or payments from Borrower to Lender of any kind or nature, present or future, under any instrument, agreement, or other document, whether arising under this Note, any other Loan Document, or otherwise, whether directly or indirectly (including those required by assignment), whether or not principal, secondary or accessory, due or to become due, now existing, or hereafter arising, and however computed.
- (44) "Lien" shall mean any claim, liability, security interest, debt, mortgage, deeds of trust, pledges, conditions, charges, debts, options, rights of first refusal, easements, prelates, voting trusts or agreements, trust or restrictions under any contract or agreement or encumbrance of any kind or nature whatsoever.
- (45) "Loan Documents" shall have the meaning set forth in Section 11.
- (46) "Maturity Date" shall mean (i) for all Liabilities concerning or relating to a Escrow Advance or a Receivable Advance, the earlier of the last day of the current Period or the day on which Lender declares a Maturity Event; (ii) for all Liabilities not directly related to a Escrow Advance or a Receivable Advance, on (10) days after the date such Liability is passed to Borrower's account; and (iii) for One Day Loans, the

Page 2 of 4



date each One Day Loan is posted to Borrower's account. Notwithstanding the foregoing, upon the declaration of an Event of Default by Lender, the Maturity Date for all Liabilities shall be the earlier of (i) the date on which such Event of Default is declared by Lender, or (ii) the date on which such Event of Default first occurred. In the event the Maturity Date is not a Business Day, the Maturity Date shall be deemed to be the next Business Day.

- (41) "Maturity Event" shall mean any event, act or circumstance relating under this Note or any other Loan Document (including any letters by Borrower in reliance to any term or provision of this Note or any other Loan Document), which cause Lender to declare the event, act or circumstance a "Maturity Event" with respect to any Financial Advance or Receivable Advance.
- (42) "Mortgage" shall mean the mortgage or mortgages of or title or other document evidencing ownership of a Unit owned by the mortgagor of the Unit.
- (43) "Note" shall mean this Demand Promissory Note and Loan and Security Agreement and all present and future amendments, modifications, and all documents referenced herein.
- (44) "One Day Loan" shall mean the amount of any Advance that is in issue at the earliest date of a Unit, as determined by Lender in its sole discretion. The determination of whether to approve an Advance which would result in the posting of a One Day Loan to Borrower's account shall be in Lender's sole discretion. One Day Loans mature on the date on which they post to Borrower's account.
- (45) "Open Market" shall have the meaning set forth in Section 7(b).
- (46) "Ordinary Course of Business" shall mean the ordinary course of the business of Borrower, consistent with past practices (not only in the normal past practices were in compliance with Law and in accordance with local industry practices).
- (47) "Parent Company" shall mean, with respect to Borrower or any Operating, the Person(s) that, directly or indirectly, have the power to direct or cause the direction of the management and policies of Borrower or Operating, in the case may be, whether through the ownership of voting securities, by contract or otherwise.
- (48) "Party" or "Parties" shall have the meaning set forth in the Preamble.
- (49) "Timing" shall mean the number of days set forth on the applicable Advance Schedule, which (i) in the case of a Financial Advance, shall be calculated beginning on the Maturity Date; and (ii) in the case of a Receivable Advance, shall be calculated beginning on the Receivable Origination Date.
- (50) "Entity" shall mean any individual, corporation, joint stock company, association, partnership, joint venture, trust, estate, limited liability company, limited liability partnership, governmental authority or other entity or organization.
- (51) "Liabilities" shall mean all debts, including a debt instrument created or by here may have created, evidencing a monetary obligation of a lender for the purchase of a motor vehicle from Borrower and the granting of a security interest in the vehicle to Lender to secure for the repayment of the monetary obligation.
- (52) "Receivable Advance" shall mean an Advance made pursuant to this Note to provide Borrower with working capital secured by a specific Receivable created and originated by Borrower in the Ordinary Course of Business.
- (53) "Receivable Fee" shall mean the fee charged by Lender to Borrower, set forth on the applicable Advance Schedule, for each individual Receivable Advance for each Period, including any Nonpayment Fees.
- (54) "Receivable Origination Date" shall mean, with respect to any Receivable for which a Receivable Advance is made pursuant to this Note, the date on which such Receivable was originated by Borrower.
- (55) "Representatives" shall mean, with respect to Borrower or Lender, in the case may be, the directors, officers, stockholders, employees, trustees, agents, and representatives, including any independent broker, consultant, attorney, or accountant, of Borrower or Lender, if the case may be.
- (56) "Required Reserve Amount" shall mean the aggregate total amount of funds required to be received by Borrower to Lender, as set forth in the applicable Advance Schedule, and held in the Reserve as a condition to the grant of Credit under this Note and the other Loan Documents.
- (57) "Reserve" shall mean the cash deposited with Lender by Borrower on a voluntary basis as required in an underlying condition and held by Lender in addition to the Borrower's Liabilities under this Note and the other Loan Documents, and Borrower's other obligations (as defined in the Reserve Agreement) to the Lender Parties.
- (58) "System Charge" shall mean the charge by Lender to Borrower, as set forth on the applicable Advance Schedule, assessed for the purpose of funding any Reserve.

- (60) "Retail Fund" shall have the meaning set forth in Section 2(1).
- (61) "Special Source Purchase" shall mean all purchases of other requests for an Advance, made by or on behalf of Borrower, that do not constitute a Uniform Source Purchase.
- (62) "Terms and Conditions" shall mean all provisions of this Note and the other Loan Documents, with the exception of terms specifically referenced in the applicable Advance Schedule.
- (63) "TIC" shall mean the certificate of title or other document evidencing ownership of a Unit issued by a duly authorized state, governmental, judicial, or government agency.
- (64) "TIC" shall mean the Uniform Commercial Code as applied in the State where the Certificate of Title is located.
- (65) "TIC" shall mean any manufactured item, including motor vehicles, for which there exists a TBI, MAC, or other similar evidence of ownership acceptable to Lender.
- (66) "Uniform Purchase Plan" shall mean any purchase plan, as stated in the Finance Program Note, Plan, and Term Schedule, charged by Lender to Borrower pursuant to a Finance Program.
- (67) "Uniform Source Purchase" shall mean any purchase made by or on behalf of Borrower for which (a) a request for an Advance is made by or on behalf of Borrower; (b) from a source or third party business that has entered into a uniform funding agreement with Lender; and (c) each request for an Advance is received by Lender within seven (7) days of Borrower's purchase of the vehicle that is the subject of such request.

**ADVANCE SCHEDULE**  
(Small)Borrower: The Luxury Hair Inc.  
Account Number: 66666Market: Market South  
Advance Purpose: Diamond

This Advance Schedule is being entered into by the undersigned borrower ("Borrower") and WestGore Capital, Inc. ("Lender") pursuant to that certain Demand Promissory Note and Loan and Security Agreement by and between Borrower and Lender (the "Note"). Capitalized terms used herein but not defined herein shall have the respective meanings as set forth in the Note (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

The following terms shall apply to Advances made under the Note and this Advance Schedule:

The Floorplan Fee, the Periodic Fee, and the required principal advance fee shall be as set forth in the Note and this Advance Schedule shall be as follows:

Period	Number of Days in Period	Required Principal Reduction for Cashflow at Maturity Date	Floorplan Fee
1	60	3%	\$75.00
2	90	3%	\$112.50
3	120	100%	\$150.00

Constant Rate: 1.75%

Additional fees, charges, and other terms applicable to Advances made pursuant to the Note and this Advance Schedule are set forth in the Finance Program Rule, Fee, and Term Schedule, which can be found on the Discover Portal.

WESTGORE, the Parties, by their respective duly authorized representatives, have executed this Advance Schedule on the dates set forth below:

**BORROWER**

The Luxury Hair Inc.

By:

Name:

Title:

Date:

*[Signature]*  
3/20/14

**LENDER**

WESTGORE CAPITAL, INC.

By:

Name:

Title:

Date:

*[Signature]*  
3/20/14

**POWER OF ATTORNEY**  
(Bulky Partnership)

This Power of Attorney is executed by the undersigned Borrower ("Borrower") and delivered to NextClear Capital, Inc. ("Lender") pursuant to that certain Demand Promissory Note and Loan and Security Agreement by and between Borrower and Lender (the "Note"). Capitalized terms used herein but not defined herein shall have the respective meanings set forth in the Note (such meanings to be equally applicable to both the singular and plural forms of the terms defined). Any capitalized terms used herein, but not otherwise defined herein or in the Note, or as the case may be, shall have the meanings ascribed to them in the UCC.

1. No Person to whom this Power of Attorney is presented, or to whom the Lender is to take any action described herein, shall be required to inquire into or verify the authority of the Borrower to execute any action described herein, or as to the existence of or satisfaction of any conditions to this Power of Attorney, which is intended to grant to Lender unconditionally the authority to take and perform the actions described herein. Borrower irrevocably vests any right that it may have, now or at any time in the future, to commence any claim, litigation, suit, petition, writ, or proceeding in any court or tribunal jurisdiction or before any arbitrator or other neutral, against any Person acting in reliance upon or otherwise acknowledging any power or authority granted by Borrower under this Power of Attorney. The Power of Attorney granted hereby is coupled with an interest and may not be revoked or amended by Borrower without Lender's written consent or as otherwise allowed by Law. This Power of Attorney shall be deemed a "Loan Document" for all intents and purposes as referenced in the Note.
2. With or without the concurrence of an Board of Directors under the Note, Borrower irrevocably appoints Lender (and all Representatives designated by Lender), with full power of substitution, as Borrower's true and lawful attorney-in-fact with full power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, from time to time in Lender's discretion, to take any and all appropriate actions and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purposes of the Note and each of the other Loan Documents. Without limiting the generality of the foregoing, Borrower hereby grants to Lender the power and right, on behalf of Borrower, with full authority to or on behalf of Borrower, at any time, to do the following:
  - (a) execute such security agreements, pledges, notes, and related documents as may be necessary for Borrower to acquire, refinance, or sell any Collateral (including any Collateral secured or to be secured by Advances made hereunder);
  - (b) execute all documents necessary for Lender to perfect or maintain its interest in the Collateral;
  - (c) make, receive, and adjust claims under policies of insurance, and endorse any check, draft, instrument, or other form of payment for the proceeds of such policies of insurance, and make all determinations and decisions with respect to such policies of insurance;
  - (d) execute the name of Borrower upon any document, instrument, certificate, evidence of title, note, negotiable instrument, bank receipt, check, or other form of payment, or any related or similar documents, in each case as necessary to pay for or protect the Collateral, including, without limitation, any agreements between Borrower and any third party relating to the Collateral;
  - (e) to cause the name of Borrower upon any form of payment or proceeds of any Collateral (including any bank mortgage Collateral), and to deposit the same in the account of Lender or account of Borrower's Lender under the Note and the other Loan Documents;
  - (f) endorse the name of Borrower upon any check, paper, document, instrument, receipt, bill, bill of lading, or similar document or agreement relating to any Collateral;
  - (g) use the information recorded on or contained in any data processing equipment, computer hardware, or software including in any Collateral in which Borrower has interest;
  - (h) pay or discharge any taxes, liens, security interests, or other encumbrances levied or placed on or threatened against Borrower or any of the Collateral;
  - (i) communicate with any party in any context with respect to the management of the debt, title, and interest of Borrower in and under as its constituent under the Collateral, and other matters relating to it;
  - (j) execute any third parties and disclose under receive any Borrower information, including, without limitation, information or data in Borrower's application for credit with Lender, the Note, or Borrower's Credit Line, in each case for the purpose of using other things, preserving Lender's security interest in the Collateral and ensuring the satisfaction of Borrower's obligations under the Note and the other Loan Documents; and
  - (k) do all other things reasonably necessary to satisfy Borrower's obligations under the Note and the other Loan Documents.
3. Upon the occurrence of an Event of Default under the Note, Borrower irrevocably appoints Lender (and all Representatives designated by Lender), with full power of substitution, as Borrower's true and lawful attorney-in-fact with full power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, from time to time in Lender's discretion, to do the following:
  - (a) demand, collect, accept receipt for, settle, compromise, adjust, discharge, or release upon any of the Collateral, in each case in such manner as Lender may determine;



- (N) file or prosecute any claim, litigation, suit, petition, writ, or proceeding in any court of competent jurisdiction or before any arbitrator or other tribunal, or take any other action otherwise deemed appropriate by Lender for the purpose of collecting any and all such amounts due to Borrower, whenever payable, and in exercise any other right in respect of the Collateral, including, without limitation, exercising its or its successors in judgment, writs of replevin or possession, under any applicable statute in favor of Lender or its Affiliates;
- (O) file or prosecute all claims or claims against any account debtor on behalf of Borrower; and
- (P) notify the United States Postal Service of a change in address for the delivery of Borrower's mail to an address designated by Lender, and to receive Borrower's mail on behalf of Borrower.
4. Any provision of this Power of Attorney that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable its remaining provisions of this Power of Attorney or affecting the validity or enforceability of any provision of this Power of Attorney in any other jurisdiction. Borrower hereby agrees, to the extent permitted by Law, that Lender or its designated Representative shall lawfully do or cause to be done by others by whom it may be represented, in the utmost good faith and in accordance with the terms of this Power of Attorney, and in addition to any rights and privileges in which Lender or any other Person may be entitled under the laws or any other Laws of the United States. A facsimile or photostatic reproduction of any signature on this Power of Attorney shall be deemed an original signature for all intents and purposes.

WHEREFORE, Borrower, by its duly authorized representative, has executed this Power of Attorney on the date and forth below.

WITNESSETH

The Lender I hereby

By

Witness Antonio Gutierrez

Title Pres

Date 3/20/2014

STATE OF PA }  
COUNTY OF Lancaster } SS

Borrower and Notary Public in and for said County and State personally appeared Antonio L. Gutierrez, known to me to be the President of The Liberty Bank, INC., who acknowledged the execution of the foregoing Power of Attorney, and who, having been duly sworn, states that my representation contained therein is true.

Witness my hand and Notarial Seal this 20 day of MARCH, 2014.

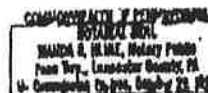
Notary Signatures

Notary Name (Printed)

My Commission Expires: 10-20-2014

County of Residence

Lancaster



## INDIVIDUAL GUARANTEE

THIS INDIVIDUAL GUARANTEE (the "Guarantee") is made and entered into by the undersigned guarantor ("Guarantor") in favor of MacDermott Capital, Inc. ("Lender"), pursuant to that certain Demand Promissory Note and Loan and Security Agreement by and between Borrower (as defined herein) and Lender (the "Note").

NOW, THEREFORE, in consideration of any loan or other financial accommodation heretofore or hereafter at any time made or granted to Borrower by Lender, and the mutual covenants, agreements, and conditions contained herein, Guarantor agrees as follows:

1. **DEFINITIONS.** Capitalized terms used herein and not defined in this Section 1 or elsewhere in this Guarantee shall have the respective meanings as set forth in the Note (such meanings to be equally applicable to both the singular and plural forms of the terms defined). Any capitalized terms used herein, but not otherwise defined herein or in the Note, as the case may be, shall have the meanings ascribed to them in the UCC.

- (a) "**Balance**" shall mean the amount listed below, including any Additions at each Payee, whether now in existence or heretofore established or required:

The Lumber House Inc  
333 Canal Ave., London, ON N7Y 1A5  
Telephone (505) 346-9760 Facsimile (505) 346-9761

- (b) "**Liabilities**" shall mean any and all Advances, debts, financial obligations, fees, charges, expenses, attorneys' fees, and costs of collection arising, owing, due, or payable from Borrower to Lender or any of its Affiliates, of any kind or nature, present or future, under any instrument, guaranty, or other document, whether arising under the Note or any other Loan Document, whether directly or indirectly, whether or not such debt, liability or obligation is, was or is to become due, now existing or hereafter arising, and however supplied.

## 2. GUARANTEE AND OTHER AGREEMENTS

- (a) **Guaranty Obligations.** Guarantor hereby voluntarily, irrevocably, and conclusively guarantees (i) the full and prompt payment when due, whether by acceleration or otherwise, and at all times hereafter, of all Liabilities and (ii) the full and prompt performance of all the terms, covenants, conditions, and agreements related to the Liabilities. Guarantor further agrees to pay all expenses, including attorneys' fees and court costs (including, but not limited to, those relating to bankruptcy and appeals, paid or incurred by Lender or its Affiliates in enforcing or collecting on any Liabilities, and in enforcing this Guarantee or in defending any claims by Borrower or any Guarantor related to any of the Liabilities, plus interest on such amounts at the lower of (A) fifteen percent (15%) per annum, compounded daily, or (B) the maximum rate permitted by Law, interest on such amounts paid or incurred by Lender shall be computed from the date of payment made by Lender and shall be payable on demand.
- (b) **General Nature of Guaranty.** Guarantor acknowledges that this Guarantee is a guaranty of payment and not of collection, and that his or her obligations hereunder shall be absolute, unconditional, and unaffected by (i) the waiver of the performance or observance by Borrower or any Guarantor of any agreement, covenant, term, or condition to be performed or observed by Borrower or any such Guarantor, as the case may be; (ii) the extension of time for the payment of any sum owing or payable with respect to any of the Liabilities or the time for the performance of any other obligation arising out of or relating to any of the Liabilities; (iii) the modification, alteration, or amendment of any obligation arising out of or relating to any of the Liabilities; (iv) any delay, defect, or omission by Lender to enforce, assert, or prosecute any right, power, or remedy in connection with any of the Liabilities; (v) the payment, validity, or enforceability of any of the Liabilities or any document related thereto; (vi) the release, value, or condition of, or failure of Lender to perfect its lien against, any security pledged in connection with the Liabilities; (vii) the release of any security pledged in connection with the Liabilities, or the release, modification, waiver, or failure to enforce any other security, pledge, or security agreement; (viii) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the property, reorganization of assets and liabilities, receivership, bankruptcy, liquidation, assignment for the benefit of creditors, reorganization, arrangement, suspension, or enforcement or other similar application or proceeding affecting Borrower or any asset of Borrower; (ix) the release or discharge of Borrower or any other Guarantor from the performance or observance of any agreement, covenant, term, or condition in connection with any of the Liabilities, by operation of Law or otherwise; (x) the default of Borrower in any obligations to Guarantor or any term assumed by Borrower against Guarantor, even if Lender is obliged to be satisfied or to have constituted a direct and actual Guarantor; or (xi) any change in Borrower's ownership, equity, capital, legal structure, or state of organization or formation, or in Guarantor's relationship to Borrower or any other Guarantor.
- (c) **Continuing and Uninterrupted Nature of Guaranty.** The obligations of Guarantor under this Guarantee shall be continuing and shall survive any and all Liabilities arising as of the effective date of this Guarantee and any and all Liabilities hereafter incurred by Borrower, including any and all Liabilities existing at the time of any termination of this Guarantee. This Guarantee shall be enforceable in whole and shall continue in effect until this Guarantee is terminated pursuant to Section 1.
- (d) **Waiver by Guarantor.** Guarantor hereby expressly waives (i) notice of the assignment by Lender of this Guarantee; (ii) notice of the existence, creation, or non-payment of all or any of the Liabilities; (iii) promissory, demand, notice of default, protest, and all other notices whatsoever; (iv) diligence in collection of payment of, or remedies upon any of the Liabilities, any Waiver under this Guarantee, or any security for or guaranty of any of the foregoing; (v) impairment of any collateral securing the Liabilities; (vi) notice of any change in Borrower's credit rating or status with Lender, including any temporary or permanent increase in Borrower's Credit Line (and Guarantor irrevocably consents to any such change); (vii) any non-commercial debt of Lender to Borrower or any Guarantor; and (viii) the jurisdiction of any court intended to prevent enforcement of certain payment terms, or the Liabilities are recommended in writing.

- (4) **Authorization.** Guarantor authorizes Lender to obtain and share credit information relating to Guarantor from and with credit bureaus, financial institutions, credit providers, affiliates, and others and to conduct such other credit investigations that Lender in its sole discretion deems necessary. Guarantor expressly authorizes Lender to obtain his or her consumer credit report from time to time at Lender's discretion, and expressly releases any such consumer credit report that may have been obtained by or on behalf of Lender prior to the effective date of this Guaranty. Guarantor also authorizes Lender to conduct any third party credit investigation for the purpose of making other loans, obtaining borrower agreements and protecting Lender's security interest. Further, Guarantor authorizes Lender to periodically obtain additional credit information on Guarantor through any available medium.
- (5) **Communication.** Guarantor hereby expressly authorizes Lender and its Affiliates to communicate with Guarantor via electronic transmission, email messages, telephone transmission, both to a residential telephone line and/or cell phone, including text messaging, using an electronic telephone dialing system or an artificial or prerecorded voice message, and/or any other form of communication, for any purpose, including general business notices, account information, marketing materials, collection, and/or any other communication needs. Guarantor acknowledges and agrees that such system permission shall extend to any and all of the contact information that Guarantor has provided herein, including any physical and email addresses, phone numbers, fax numbers, etc., and to such other addresses, phone numbers, email addresses, online chat, social media platforms, etc., that Guarantor may provide to Lender or that Lender may obtain from any third party at a later date.
- (6) **Indemnification.** In no event shall Lender have any obligation to proceed against Borrower, any other Guarantor or any other Person, or any security pledged in connection with the Loan, before seeking collection from Guarantor. Lender may, at its option, proceed, prior or subsequent to, or simultaneously with, the enforcement of its rights hereunder, to exercise any right or remedy it may have against Borrower, any other Guarantor or other Person, or any security pledged in connection with the Loan. This Guaranty is in addition to, and not in substitution for, any other remedy or other security which Lender may now or hereafter hold.
- (7) **Release/Assignment.** Guarantor agrees that, if at any time all or any part of any personal identification applied by Lender to any of the Loan(s) is or may be rendered or required by Lender for any reason whatsoever (including as a result of any bankruptcy, liquidation, or reorganization of Borrower or any of its or her Affiliates), such Loan(s) shall, for purposes of this Guaranty, be the asset that such payment is or may be received or returned, be deemed to have resulted in collection, notwithstanding such application by Lender, and this Guaranty shall continue to be effective or substituted, as applicable, in to all such Loan(s), all as though such application by Lender had not been made.
- (8) **Financial Statements.** Upon Lender's request, Guarantor will provide Lender with Guarantor's audited financial statements, as certified by Guarantor's independent certified public accountant, and such other financial statements, information, and other materials as Lender may request from time to time.
- (9) **Acceleration & Remedial Action.** Any amounts received by Lender from any source on account of the Loan(s) may be applied by it toward the payment of such of the Loan(s), and in each order of application, as Lender may from time to time elect. Notwithstanding any payment made by or for the account of Guarantor, Guarantor shall not be subrogated to any rights of Lender.
- 3. TERMINATION.**
- (a) **Payment of Loan(s) and Termination of Credit Line.** This Guaranty shall be terminated upon the occurrence of all of the following: (i) the payment by Borrower of any Guarantor, either jointly or severally, of all Loan(s) outstanding; (ii) the payment of all obligations by Guarantor which may be due to Lender under this Guaranty; or (iii) the filing of a UCCS termination statement as to Borrower by or on behalf of Lender, or other written verification from Lender that Borrower's Credit Line is terminated.
- (b) **Renewal of Guaranty.** This Guaranty may be renewed by Guarantor upon written notice to Lender by certified mail, return receipt requested, to the address provided in Section 1(f). This Guaranty shall be deemed terminated upon the occurrence of a revocation in the manner provided in this Section 3(b). However, such revocation and termination shall in no way constitute or otherwise affect (i) any obligations of Guarantor existing on or prior to the effective date of such revocation or termination; or (ii) any obligations of Guarantor arising after the effective date of such revocation or termination with respect to any Loan(s) incurred by Borrower on or before the effective date of such revocation or termination.
- 4. EVENTS OF DEFAULT.** The occurrence of any of the following events shall be considered an event of default under this Guaranty (each, an "Event of Default"):
- (a) Guarantor fails to make full payment of any amount owed hereunder after notice from Lender;
- (b) Guarantor fails to perform or observe any agreement, covenant, term, or condition contained in this Guaranty (other than any secondary obligation described in clause (a) above), and such failure constitutes for the (i) days after notice from Lender;
- (c) Guarantor makes an assignment for the benefit of creditors or fails to pay his or her debts as the same become due and payable;
- (d) Guarantor petitions or applies to any tribunal for the appointment of a trustee or receiver of its business, assets, or assets or of any substantial portion of its or her business, assets, or assets, or commences any proceedings relating to Guarantor under any bankruptcy, reorganization, liquidation, receivership, or Insolvency Law of any jurisdiction, whether now or hereafter in effect (each, a "Revolving Event").

- (4) any Bankruptcy Filing is filed or any related proceedings commenced against Guarantor, and Guarantor by any act indicates he or she approved thereof, consented thereto, or acquiesced therein, or any action is entered upholding any trustee or receiver, declaring Guarantor bankrupt or insolvent, or approving or accepting the Bankruptcy Filing in any such proceedings;
- (5) any suit or proceedings is filed or any related proceedings commenced against Guarantor as any of his or her Affiliates, which, if adversely determined, could substantially impact the ability of Guarantor or Guarantor to perform any of their respective obligations with respect to the Guaranty or any of the Liabilities, in such case as determined by Lender in its sole and absolute discretion; or
- (6) there is any Event of Default by Guarantor under the Note.

If an Event of Default under this Guaranty shall have occurred, in addition to pursuing any remedies which may be available to Lender with respect to the Liabilities, Lender, at its option, may take whatever action it may in its sole discretion, regardless of whether Lender shall have exhausted any of its rights or remedies with respect to any of the Liabilities, and Lender may demand, at its option, that Guarantor pay forthwith the full amount which would be due and payable hereunder as if all Liabilities were then due and payable.

#### 5. GENERAL.

- (a) **Assignment; Assignment and Assumption.** This Guaranty may be assigned by Lender without notice to Guarantor, but Guarantor may not assign this Guaranty without the prior written consent of Lender. The guaranty and the other agreements mentioned herein shall bind the legal representatives, heirs, successors, and assigns of Guarantor, and shall inure to the benefit of Lender and its successors and assigns. Such references to Guarantor herein shall be deemed to include the legal representatives, heirs, and assigns of Guarantor, and their respective successors and assigns.
- (b) **Assignment; Interest.** This Guaranty is intended by the Parties to be an assignment to and continuation of any prior indebtedness of Guarantor to other similar documents or instruments between Lender (or any predecessor of Lender, including Dealer Services Corporation under Mediate Automotive Financial Services, Inc.) and Guarantor, or otherwise executed by Guarantor for the benefit of Lender (or any predecessor of Lender, including Dealer Services Corporation under Mediate Automotive Financial Services, Inc.). This Guaranty may be modified or amended only upon the written consent of Lender and Guarantor. The Parties acknowledge that Guarantor may have other indebtedness not mentioned in the terms and conditions set forth in the Note, and, in such event, this Guaranty shall be deemed supplemental and in addition to the terms and conditions of the Note to which Guarantor has acknowledged and assented. In the event of any conflict between a term or provision set forth in this Guaranty and a term or provision set forth in the Note, the term or provision set forth in this Guaranty shall, in the event of conflict, prevail over the term or provision set forth in the Note, to the extent of such conflict.
- (c) **Execution.** Guarantor may execute this Guaranty only by original signature of Guarantor, unless otherwise authorized by Lender. Lender may, in its sole discretion, permit Guarantor to execute this Guaranty by affixing to this Guaranty an electronic or digital signature. Guarantor acknowledges and agrees that any electronic or digital signature of Guarantor shall for all purposes be deemed effective and constitute the valid signature of Guarantor, and shall be deemed to satisfy all requirements imposed on documents or digital signatures under the UCC, the Electronic Signatures in Global and National Commerce Act (the "E-Sign Act"), and any other similar laws relating to the validity or enforceability of electronic or digital signatures, and such electronic or digital signature shall not be denied legal effect, validity, or enforceability solely because it is in electronic or digital form. A facsimile or photocopied reproduction of the signature on this Guaranty shall be deemed original signature for all intents and purposes.
- (d) **Delivery.** All notices, demands and requests required or permitted to be given under this Guaranty shall be (i) in writing, (ii) sent by facsimile with receipt confirmed by telephone (not only if a facsimile number is provided below, confirmed by personal delivery or sent by commercial delivery service or certified mail, return receipt requested (except with respect to notices pursuant to Section 3(d), which notices may only be given by certified mail, return receipt requested), (iii) deemed to have been given on the date sent by facsimile with receipt confirmed by telephone, the date of personal delivery or the date set forth in the records of the delivery service or as the return receipt, and (iv) addressed to Lender (or, in the case of Lender, to any other address then Lender may provide to Guarantor (through written notice or otherwise) for purposes of forwarding above notices, demands or requests).

TO LENDER:

NorthStar Capital, Inc., 1330 City Center Drive, Suite 300, Carroll, DE 19633  
Telephone: (301) 771-6721 Facsimile: (301) 771-6721

with a copy to:

NorthStar Capital, Inc., 1330 City Center Drive, Suite 300, Carroll, DE 19633  
Telephone: (301) 771-6721 Facsimile: (301) 771-6721  
Attention: Legal Department

If to Guarantor:

Antonio L. Gutierrez  
437 Shuler Road, New Jersey 07067  
Telephone: (201) 346-8700 Mobile: (201) 346-8659

- (4) Mr. Wilson. No failure or delay by Lender in exercising any right, power, or privilege or the granting of an extension by Lender with respect



to any term or condition of this Guaranty will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege, or the exercise of any other right, power, or privilege by Lender.

(d) **Waiver.** Any provision of this Guaranty that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Guaranty or affecting the validity or enforceability of any provision of this Guaranty in any other jurisdiction.

(e) **Choice of Law.** Except with respect to the interpretation or enforcement of the arbitration and other provisions set forth in Section 10 (which shall be governed by the Federal Arbitration Act), the validity, enforceability, and interpretation of this Guaranty shall be governed by the laws of the State of Indiana, without regard to conflict of laws provisions thereof.

(f) **Jurisdiction and Venue.** As evidenced by Guarantor's signature below, Guarantor submits to the personal jurisdiction and venue of the state and federal courts of Marion County and Hamilton County, Indiana, and agrees that any and all claims or disputes pertaining to this Guaranty, or to any matter arising out of or related to this Guaranty, submitted by Guarantor against Lender, shall be brought in the state or federal courts of Marion County or Hamilton County, Indiana. Further, Guarantor expressly submits to the jurisdiction and venue of the state and federal courts of Marion County and Hamilton County, Indiana, as to any legal or equitable action that may be brought in such court by Lender, and waives any objection based upon lack of personal jurisdiction, however venue or time and jurisdiction with respect to any such action. Guarantor understands and agrees that Lender reserves the right to initiate and prosecute any action against Guarantor in any court of competent jurisdiction, and Guarantor consents to such forum as Lender may elect.

(g) **Dispute Resolution: Waiver of Other Action Rights.**

(1) In the voluntary event that Lender is unable to resolve a dispute or claim that Guarantor may have, Guarantor agrees to submit any such dispute or claim. This agreement to arbitrate is intended to be broadly interpreted, and includes (i) all disputes, claims and controversies arising out of or relating to this Guaranty or any aspect of Guarantor's relationship with Lender, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; (ii) all disputes, claims and controversies that may have arisen before this Guaranty or any prior contract or agreement between Guarantor and Lender; and (iii) any disputes, claims and controversies that may arise after the termination of this Guaranty. Additionally, Guarantor understands and agrees that Lender may find that it is in its best interest to submit any dispute or claim that it may have against Guarantor, with any such submission being governed by the provisions of this Section 10. Guarantor, if he or she chooses, may opt-out of the arbitration provisions set forth in Sections 10(b), 10(c)(i) and 10(c)(ii) by providing written notice of his or her election to opt-out to Lender (which shall be deemed to be an Opt-Out Notice) within the time period set forth in Lender's written notice to Guarantor. If Guarantor does not provide such Opt-Out Notice to Lender within the required time period, Guarantor understands and agrees that, regardless of any Opt-Out Notice or any written communication thereof, Guarantor shall be deemed to be subject to the provisions of Section 10(b).

(2) ANY ARBITRATION PROCEEDINGS UNDER THIS GUARANTY WILL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ARBITRATION AND CLASS ACTIONS OF ANY KIND (WHETHER PURSUED THROUGH ARBITRATION OR THROUGH THE COURTS) ARE NOT PERMITTED. GUARANTOR AGREES THAT IT MAY REVOKE CLASS ACTION RIGHTS ONLY IN HIS OR HER INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. GUARANTOR AGREES THAT, BY ENTERING INTO THIS GUARANTY, GUARANTOR IS WAIVING HIS OR HER RIGHT TO PARTICIPATE IN ANY CLASS ACTION OR OTHER SIMILAR REPRESENTATIVE PROCEEDING, UNLESS COMMENTED TO IN WRITING BY LENDER. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIM, AND MAY NOT OTHERWISE PROCEED OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. GUARANTOR ACKNOWLEDGES AND AGREES THAT THE SUM OF BORROWER'S CURRENT LINE, THE INTEREST RATE TO WHICH ADVANCES ARE SUBJECT AND CERTAIN FEE CHARGED TO BORROWER, AS WELL AS THE SIZE AND DATES OF FUTURE ADVANCES AND WHAT (IF ANY) GUARANTIES ARE REQUIRED, ARE UNKNOWN TO AND UNOBTAINABLE BY BORROWER (AND, IF APPLICABLE, GUARANTOR), AND THAT SUCH FACTORS WILL AND DO VARY AMONG BORROWERS AND OTHER GUARANTORS.

(3) Any dispute or claim subject to arbitration pursuant to this Section 10 shall be submitted to binding arbitration administered by the Federal Arbitration and Mediation Service ("FAMS") pursuant to its Comprehensive Arbitration Rules and Procedures or then in effect (the "FAMS Comprehensive Rules") unless, however, that any dispute or claim that is subject to arbitration pursuant to this Section 10 and that involves disputes or claims where the aggregate amount reasonably in dispute or controversy is less than \$100,000, shall be submitted to binding arbitration administered by FAMS pursuant to its Streamlined Arbitration Rules and Procedures or in effect at the effective date of this Guaranty (the "FAMS Streamlined Rules"). The disputes and claims subject to arbitration pursuant to this Section 10 shall be resolved by a single arbitrator selected pursuant to the FAMS Comprehensive Rules or the FAMS Streamlined Rules, as the case may be. The arbitrator shall be bound by and shall strictly enforce the terms of this Guaranty and may not hear, accept or otherwise modify any term or provision of this Guaranty or any other contract or document between Guarantor and Lender. The arbitrator shall not have the power to award or grant any damages that are excluded or that have been waived by Guarantor under this Guaranty, and Guarantor irrevocably waives any claim that it may have therein. The arbitrator shall not have the power to order pre-judgment discovery of documents or the taking of depositions. The arbitrator shall render a written decision within six (6) months after being selected. Any arbitration will be held in Indianapolis, Indiana (or its greater metropolitan area). Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration services, unless the arbitrator rules, in his or